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8 BEFORE THE DEPARTMENT OF CORPORATIONS
 9 OF THE STATE OF CALIFORNIA
 10

11 In the Matter of the Accusation/Statement of)	Case No.: 963-1996
Issues of THE CALIFORNIA)	
12 CORPORATIONS COMMISSIONER,)	ACCUSATION/STATEMENT OF ISSUES
)	
13 Complainant,)	
)	
14 vs.)	
)	
15 VINEYARD ESCROW and TIMOTHY RORY)	
16 DELANEY,)	
)	
17 Respondents.)	
18		

19 The Complainant is informed and believes, and based upon such information and belief,
 20 alleges and charges Respondents as follows:

21 I

22 INTRODUCTION

23 The Commissioner’s proposed orders seek to revoke the escrow agent’s licenses of Vineyard
 24 Escrow (“Vineyard”) pursuant to Section 17608 of the California Escrow Law (California Financial
 25 Code §§ 17200 et. seq.), bar Timothy Rory Delaney (“Delaney”) pursuant to Section 17423 of the
 26 California Escrow Law from any position of employment, management or control of any escrow
 27 agent, and deny the issuance of an escrow agent’s branch license to Vineyard pursuant to Section
 28 17209.3 of the California Escrow Law in that Vineyard and Delaney have committed numerous

1 violations of the California Escrow Law, which violations include commingling of trust funds and
2 escrow debit balances.

3 II

4 CURRENT ESCROW AGENT'S LICENSE

5 Vineyard, a California corporation, currently holds escrow agent's license number 963-1996
6 with a main office located at 27727 Jefferson Avenue, Temecula, California 92590, and a branch
7 office located at 3349 W. Florida Avenue, Hemet, California 92590. Vineyard has been licensed by
8 the Commissioner pursuant to the California Escrow Law since on or about March 27, 2003.

9 Delaney is, and was at all times relevant herein, the president, sole shareholder and a director
10 of Vineyard.

11 Fudosan, Inc. ("Fudosan") is an affiliate of Vineyard and is licensed as a real estate broker by
12 the California Department of Real Estate. Delaney is the president of Fudosan.

13 III

14 THE APPLICATION

15 On or June 15, 2005, Vineyard filed its application for an escrow agent's branch license to be
16 located at 29955 Technology Drive, Murrieta, California 92563 (File No. 863-1461 hereinafter
17 "application") with the Commissioner pursuant to the California Escrow Law, in particular,
18 Financial Code Section 17213.5. Delaney verified the application as president of Vineyard. The
19 application identified Delaney as the president, sole shareholder and a director of Vineyard.

20 IV

21 ESCROW LAW VIOLATIONS

22 On or about February 8, 2005, the Commissioner commenced a regulatory examination of
23 the books and records of Vineyard. The regulatory examination revealed that trust funds in the
24 amount of \$1,794,164.64 had been deposited into the trust account of Fudosan, instead of the
25 Vineyard trust account in violation of California Financial Code section 17409 and California Code
26 of Regulations, title 10, section 1737(a). At least \$899,971.18 of the Vineyard trust funds
27 wrongfully deposited into the Fudosan account were allowed to remain in the Fudosan account for
28 anywhere from one to eleven months. During this time, certain of these trust funds were used for the

1 operations of Fudosan, Inc. The commingling of trust funds is prohibited because of the serious risk
2 of misuse and loss. The commingling of trust funds by Vineyard resulted in a trust account shortage
3 and numerous ongoing debit balances in violation of California Code of Regulations, title 10, section
4 1738.1. Vineyard has corrected the trust account shortage caused by the unlawful deposits of trust
5 funds; however, it appears that trust funds from an affiliate were used to correct the trust fund
6 shortage of Vineyard.

7 A. Unlawful Deposits:

8 The unlawful deposits discovered during the regulatory examination of Vineyard, and not
9 immediately corrected are described as follows:

10 1. Vineyard escrow number 03-3170

11 On or about August 13, 2003, receipt number 6349 was issued in the amount of
12 \$32,508.91, however, the funds were deposited into the trust account of Fudosan in violation of
13 California Financial Code section 17409 and California Code of Regulations, title 10, section
14 1737(a). The trust funds were not transferred to the trust account of Vineyard until January 23,
15 2004, causing a shortage (debit balance) of \$32,508.91 in the trust account from August 13, 2003
16 until January 23, 2004.

17 2. Vineyard escrow number 03-3239

18 On or about August 22, 2003, receipt number 6392 was issued in the amount of
19 \$250,374.74, however, the funds were deposited into the trust account of Fudosan in violation of
20 California Financial Code section 17409 and California Code of Regulations, title 10, section
21 1737(a). The trust funds were not transferred to the trust account of Vineyard until January 23,
22 2004, causing a further shortage of \$250,374.74 in the trust account from August 22, 2003 until
23 January 23, 2004.

24 3. Vineyard escrow number 03-3254

25 On or about September 2, 2003, receipt number 6434 was issued in the amount of
26 \$147,492.87, however, the funds were deposited into the trust account of Fudosan in violation of
27 California Financial Code section 17409 and California Code of Regulations, title 10, section
28 1737(a). The trust funds were not transferred to the trust account of Vineyard until October 23,

2003, causing a further shortage of \$147,492.87 in the trust account from September 2, 2003 until October 23, 2003.

4. Vineyard escrow number 03-3228

a. On or about September 3, 2003, receipt number 6435 was issued in the amount of \$56,298.61, however, the funds were deposited into the trust account of Fudosan in violation of California Financial Code section 17409 and California Code of Regulations, title 10, section 1737(a). The trust funds were not transferred to the trust account of Vineyard until October 23, 2003, causing a further shortage of \$56,298.61 in the trust account from September 3, 2003 until October 23, 2003.

b. On or about September 3, 2003, receipt number 6436 was issued in the amount of \$3,000.00, however, the funds were deposited into the trust account of Fudosan in violation of California Financial Code section 17409 and California Code of Regulations, title 10, section 1737(a). The trust funds were not transferred to the trust account of Vineyard until October 23, 2003, causing a further shortage of \$3,000.00 in the trust account from September 3, 2003 until October 23, 2003.

5. Vineyard escrow number 03-3260

On or about September 19, 2003, receipt number 6505 was issued in the amount of \$109,092.27, however, the funds were deposited into the trust account of Fudosan in violation of California Financial Code section 17409 and California Code of Regulations, title 10, section 1737(a). The trust funds were not transferred to the trust account of Vineyard until October 23, 2003, causing a further shortage of \$109,092.27 in the trust account from September 19, 2003 until October 23, 2003.

6. Vineyard escrow number 03-3299

On or about October 30, 2003, receipt number 6639 was issued in the amount of \$161,031.06, however, the funds were deposited into the trust account of Fudosan in violation of California Financial Code section 17409 and California Code of Regulations, title 10, section 1737(a). The trust funds were not transferred to the trust account of Vineyard until October 21, 2004, causing a further shortage of \$161,031.06 in the trust account from October 30, 2003 until

1 October 21, 2004.

2 7. Vineyard escrow number 03-3338

3 On or about November 25, 2003, receipt number 6703 was issued in the amount of
4 \$140,172.72, however, the funds were deposited into the trust account of Fudosan in violation of
5 California Financial Code section 17409 and California Code of Regulations, title 10, section
6 1737(a). The trust funds were not transferred to the trust account of Vineyard until October 21,
7 2004, causing a further shortage of \$140,172.72 in the trust account from October 30, 2003 until
8 October 21, 2004.

9 B. Misuse of Trust Funds:

10 A review of the bank account records of Vineyard and Fudosan for the period of August 1,
11 2003 through October 31, 2004 disclosed that certain of the Vineyard trust funds unlawfully
12 deposited into the bank account of Fudosan had been used for the operations of Fudosan in violation
13 of California Financial Code section 17414(a)(1) from at least October 2003 through October 21,
14 2004.

15 C. Commingling – Fudosan to Vineyard:

16 The regulatory examination further disclosed that on at least 3 occasions, trust funds
17 belonging to the Fudosan trust account were either deposited and/or transferred into the Vineyard
18 trust account in violation of California Financial Code section 17411.

19 This further unlawful commingling discovered during the regulatory examination of
20 Vineyard is as follows:

21 1. On or about September 25, 2003, a wire in the amount of \$266,404.62 designated for
22 Fudosan was deposited into the Vineyard trust account in violation of California Financial Code
23 section 17411. The Fudosan trust funds were not transferred to the trust account of Fudosan until
24 October 6, 2003.

25 2. On or about November 14, 2003, the amount of \$10,000.00 was transferred from the
26 Fudosan trust account to the Vineyard trust account in violation of California Financial Code section
27 17411. The Fudosan trust funds were not transferred back to the trust account of Fudosan until
28 October 21, 2004.

RELEVANT ESCROW PROVISIONS

All moneys deposited into escrow to be delivered upon the close of the escrow or upon any other contingency, shall be deposited and maintained in a noninterest-bearing demand or checking account in a bank All such funds, when deposited, are to be designated as “trust funds,” “escrow accounts,” or some other appropriate name indicating that the funds are not the funds of the escrow agent. . . .

No person shall knowingly keep or cause to be kept any funds or money in any bank or state or federal savings and loan association under the heading of “trust funds” or “escrow accounts” or any other name designating such funds or money as belonging to the clients of any escrow agency, except actual escrow or trust funds deposited with such agency.

(a) It is a violation for any person subject to this division or any director, stockholder, trustee, officer, agent, or employee of any such person to do any of the following:

(1) Knowingly or recklessly disburse or cause the disbursement of escrow funds otherwise than in accordance with escrow instructions, or knowingly or recklessly to direct, participate in, or aid or abet in a material way, any activity which constitutes theft or fraud in connection with any escrow transaction.

(a) All money received by an escrow agent as part of an escrow transaction shall on or before the close of the next full working day after such receipt be deposited in a bank, a savings bank, or a savings

1 and loan association in an account designated “trust” or “escrow” account.
2 No funds other than received as part of an escrow transaction shall be
3 deposited in such account or otherwise commingled with escrow money.

4 California Code of Regulations, title 10, section 1738.1 provides:

5 An escrow agent shall not withdraw, pay out, or transfer moneys from
6 any particular escrow account in excess of the amount to the credit of
7 such account at the time of such withdrawal, payment, or transfer.

8 VI

9 CONCLUSION

10 Complainant finds, by reason of the foregoing, that:

11 (1) Vineyard and Delaney have committed innumerable violations of the California
12 Escrow Law, including Sections 17409, 17411 and 17414(a)(1) of the California Financial Code and
13 Sections 1737(a) and 1738.1 of Title 10 of the California Code of Regulations;

14 (2) Vineyard and Delaney are incapable of operating an escrow business in compliance
15 with the California Escrow Law as demonstrated by Vineyard and Delaney’s continuous pattern of
16 violations; and

17 (3) It is in the best interests of the public to revoke the escrow agent’s licenses of
18 Vineyard, to deny Vineyard’s application for an escrow agent’s branch license, and to bar Delaney
19 from any position of employment, management or control of any escrow agent.

20 California Financial Code section 17209.3 provides in pertinent part:

21 The commissioner may refuse to issue any license being applied for
22 if upon his examination and investigation, and after appropriate notice
23 and hearing, he finds any of the following:

24 . . .

25 (f) The applicant or any officer, director, or incorporator of the
26 applicant has violated any provision of this division or the rules thereunder
27 or any similar regulatory scheme of a foreign jurisdiction.

28 California Financial Code section 17423 provides in pertinent part:

(a) The commissioner may, after appropriate notice and opportunity
for hearing, by order, . . . bar from any position of employment, management,
or control any escrow agent, or any other person, if the commissioner finds either

of the following:

(1) That the . . . bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the escrow agent or to the public.

California Financial Code section 17608 provides in pertinent part:

The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license if he finds that:

. . .

(b) The licensee has violated any provision of this division or any rule made by the commissioner under and within the authority of this division.

THEREFORE, Complainant asserts that he is justified under California Financial Code sections 17209.3, 17423 and 17608 in revoking the escrow agent's licenses of Vineyard, denying the issuance of an escrow agent's branch license to Vineyard, and barring Delaney from any position of employment, management or control of any escrow agent.

WHEREFORE, the Commissioner prays that the escrow agent's licenses of Vineyard be revoked, the application for an escrow agent's branch license filed by Vineyard on June 15, 2005 be denied, and Delaney be barred from any position of employment, management or control of any escrow agent.

Dated: September 21, 2005
Los Angeles, CA

WAYNE STRUMPFER
Acting California Corporations Commissioner

By _____
Judy L. Hartley
Senior Corporations Counsel